

REMARKS

This amendment is submitted to be fully responsive to the Office Action of May 15, 2003. With the entry of the above amendments and the following remarks, Applicant believes the pending claims are all in allowable form.

With this amendment, claims 1-5, 11 and 12 are pending in this application. Currently, claim 2 is objected to owing to the second occurrence of “OPP” therein; appropriate correction has been made. Claim 12 stands rejected under 35 U.S.C. §112, second paragraph. Claims 1-5 stand rejected under 35 U.S.C. §103(a) over Saad et al. (US 5,562,874) in view of Satoh et al. (US 6,194,061). Claim 11 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Omura et al. (US 4,650,847) in view of Satoh et al. Lastly, claim 12 stands rejected under 35 U.S.C. §103(a) over Narsutis et al. (US 5,945,145) in view of Satoh et al. and Omura et al. Applicant submits that no new matter has been entered into the application by way of this amendment.

**Remarks Directed to Rejection of
Claim 12 Under 35 U.S.C. §112, Second Paragraph**

Claim 12 stands rejected under this basis since the phrase “the package closure comprising: a package” has been found confusing. Additionally, the structure of “a package having an outer layer forming sides and an interior volume” is also considered unclear. To this end, claim 12 has been amended both within the preamble and the first element so as to clearly define that the claim is directed to a package. Applicant submits that one skilled in the art appreciates that every package has the property of defining an enclosed volume into which matter may be placed. Claim 12 in amended form now recites “an outer layer defining sides and interior volume” and further that a flap is “adapted to fold against said outer layer” where the

flap has a resealable peel antioxidant adhesive applied thereto. Accordingly, Applicant submits that the claim amendments clearly define the intended patentable structure.

Additionally, the phrase “vapor transmission rate” has been cited as rendering the claim indefinite based on ambiguity as to the kind of vapor. In response, Applicant submits that one skilled in the art of packaging appreciates that “vapor” always refers to water vapor which is the environmental agent associated with packaged product degradation.

In view of the above amendments and remarks, it is respectfully submitted that the rejection of claim 12 under 35 U.S.C. §112, second paragraph, is no longer proper and it is respectfully requested that it be withdrawn.

**Remarks Directed to Rejection of Claims 1-5 Under
35 U.S.C. §103(a) Over Saad et al. in View of Satoh et al.**

Saad et al. was cited for teaching the claim elements with the exception that this reference fails to “explicitly teach that the adhesive layer comprises a curing agent.” (5/15/03 Office Action, section 14, page 5). Satoh et al. is cited to bolster the teaching of Saad et al. with respect to this aspect. Additionally, ethylene vinyl acetate taught in Saad et al. at column 3, line 17 has been construed as an adhesive for the purposes of the outstanding Office Action.

Applicant submits that Saad et al. teaches away from the proposed combination with Satoh et al. and thereby rendering the current rejection improper. Further, the prior art reference combination fails to afford the structure of the pending claims.

Saad et al. is quite explicit in being relevant only to coextrusion of multi-layer films (see abstract; column 2, lines 15-19, 39-46; column 3, lines 34-38; and Examples 1, 2, and comparative example of column 4, lines 17-51). The comparative example found at column 4, lines 42-52 makes clear that cast extrusion formation of a three-layer laminate results in VOC volatilization that is the perceived problem aimed to be corrected by both Saad et al. and the

pending application. Saad et al. nowhere teaches a structure formation other than through blown coextrusion. The current rejection advocates the replacement of the intermediate antioxidant layer of Saad et al. with the adhesion improving layer of Satoh et al.

Applicant submits that one skilled in the art would not make such a substitution since the blown coextrusion film process of Saad et al. is completely contrary to the application process taught for the adhesive layer of Satoh et al. The adhesive layer application process according to Satoh et al. is detailed therein at column 17, line 55 – column 18, line 7. The application of a solvent filled adhesive coating layer according to Satoh et al. is wholly inconsistent with the inventive process of Saad et al. In fact, applying the process of Satoh et al. to the system of Saad et al. approaches the comparative example of Saad et al. where escape of antioxidant is observed. Furthermore, Saad et al. in the background identifies volatilization of antioxidant, namely BHT or BHA, as a limitation of the prior art (column 1, lines 18-32). Satoh et al. is silent as to the identity of possible antioxidants (column 4, line 15). Applicant submits that the heating of the adhesive coating solution of Satoh et al. to 200°C or above (column 18, line 13) is sufficient to induce significant volatilization of BHT or BHA, which have boiling points of 265°C and 264°C, respectively. Additionally, the flashpoints of BHT and BHA are 127°C and 130°C, respectively. As such, it is respectfully submitted that the teachings of Saad et al. and Satoh et al. are incompatible as a combination to render the present invention obvious.

Ethylene vinyl acetate copolymer is considered an adhesive by the Examiner as a component of Saad et al. *Hawley's Condensed Chemical Dictionary* is cited as evidence for this statement (5/15/03 Office Action, section 14, page 4).

Applicant submits that the consideration of ethylene vinyl acetate copolymer as an adhesive represents an oversimplification. According to *Hawley's Condensed Chemical Dictionary*, page 472, provided by the Examiner, EVA is “used to improve adhesion properties

of hot-melt and pressure-sensitive adhesives.” According to the teaching of Saad et al., EVA cannot be acting as an adhesive since a control layer positioned internal to the EVA layer is optional (column 3, lines 34-35). Assuming EVA was an adhesive, and the internal control layer was not present, then the storage bags formed in Saad et al. simply could not open because the interior surfaces would be adhesively joined together through the adhesive binding of one EVA surface to an opposing EVA surface.

The properties of EVA copolymer according to Saad et al. are submitted to further teach away from the prior art reference combination since an antioxidant layer of Saad et al. with little or no adhesive tack is being proposed to be replaced by a high adhesive tack material according to Satoh et al. Such a substitution not only contravenes the material choice for the antioxidant layer of Saad et al., but further makes the optional control layer of Saad et al. into a necessary element.

In view of the above remarks, it is respectfully requested that the rejection of claims 1-5 under 35 U.S.C. §103(a) over Saad et al. in view of Satoh et al. be withdrawn.

**Remarks Directed to Rejection of Claim 11 Under
35 U.S.C. §103(a) Over Omura et al. in View of Satoh et al.**

Omura et al. is cited as teaching all the aspects of claim 11 with the exception of the cured adhesive resin being solventless and the claimed Markush group of resins and the resin application density. Satoh et al. is cited to bolster these deficiencies of Omura et al.

As detailed above, Applicant submits that the prior art reference combination fails to function as per pending claim 11 on the basis that the drying conditions necessary to remove solvent and thermoset the material would cause the very antioxidant volatilization that the claimed invention attempts to avoid.

Assuming for argument's sake the proposed reference combination, 100 parts per million of BHT per Omura et al. would be mixed into a resin composition of Satoh et al. (column 2, lines 18-29). The resulting resin composition would then necessarily have to be processed according to Satoh et al. including the subsequent heating to above 200°C that dramatically improves adhesion (column 18, lines 12-17). Heating to such temperatures necessarily volatilizes the BHT present according to Omura et al. As the problem addressed at the time of the present invention was the inefficient use of antioxidants such as BHT and the volatile organic content associated with volatilization, it is respectfully submitted that one skilled in the art would not have been motivated at the time of the present invention to combine Omura et al. and Satoh et al.

As a result of the above remarks, it is respectfully requested that the rejection of claim 12 under 35 U.S.C. §103(a) over Omura et al. in view of Satoh et al. be withdrawn.

**Remarks Directed to Rejection of Claim 12 Under 35 U.S.C. §103(a)
Over Narsutis et al. in View of Omura et al. and Satoh et al.**

Applicant submits that the subject matter of claim 12 is allowable over the prior art combination for the reasons stated above with respect to the combination of Omura et al. and Satoh et al. As such, the withdrawal of the rejection of claim 12 under 35 U.S.C. §103(a) is requested.

Summary

Claims 1-5, 11 and 12 are pending in this application. In light of the above amendments and remarks, it is submitted that all of the pending claims are directed to allowable and patentable subject matter. Allowance of these claims and the passing of this application to

issuance are solicited. Should the Examiner find to the contrary, it is respectfully requested that the undersigned attorney in charge of this application be contacted.

Respectfully submitted,


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